

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

v.

CAROLYN SCHAUPP,

Defendant.

Case No. 1:23-cv-00755-SAB

ORDER DIRECTING CLERK OF COURT
TO RANDOMLY ASSIGN A DISTRICT
JUDGE TO THIS ACTION

FINDINGS AND RECOMMENDATIONS
RECOMMENDING SUMMARY REMAND
OF ACTION AND DENIAL OF
PLAINTIFF'S APPLICATION TO PROCEED
IN FORMA PAUPERIS AS MOOT

(ECF Nos. 1, 2)

FOURTEEN DAY DEADLINE

I.

INTRODUCTION

Defendant Carolyn Schaupp ("Defendant"), proceeding *pro se*, filed a "notice of removal and interlocutory appeal of state court action" regarding the Stanislaus County Superior Court case People of the State of California v. Carolyn Schaupp, No. CR-20-008761, on May 15, 2023, along with a request for judicial notice of various state court records. (ECF No. 1.) Defendant purports to remove the criminal action pursuant to 28 U.S.C. §§ 1455 and 1331. (*Id.* at 2.) Defendant did not submit a filing fee with her notice of removal but instead filed an application to proceed *in forma pauperis*. (ECF No. 2.) For the reasons discussed herein, the Court

1 recommends Plaintiff's IFP application be denied as moot and the matter be summarily remanded
2 to the State court.¹

3 **II.**

4 **REQUEST FOR JUDICIAL NOTICE**

5 **A. Defendant's Requests**

6 Defendant seeks judicial notice of the following facts:

7 **1. Writ of habeas Corpus in the District Court of Appeals,**
8 **F08165**

9 **2. Batzel v. Smith, 333 F.3d 1018 (9th Cir. 2003)**

10 **3. Denial of 425.16 Motion filed February 15, 2023, by refusing**
11 **to set hearing in case number CR20008761 within 30 days. (See**
12 **Writ of certiorari filed herewith)**

13 **4. Refusal to issue ruling on Application for Default Judgment**
14 **in 425.16 Motion filed February 15, 2023. (Default Requested**
15 **March 15, 2023.) (See writ of Certiorari filed herewith)**

16 **5. Lack of Summons in Case Number CR20008761 (See writ of**
17 **Certiorari Filed herewith)**

18 **6. Lack of arraignment in Case Number CR2008761 (See writ**
19 **of Certiorari Filed herewith)**

20 **7. Void Arrest Warrant issued 9/26/2022. (See writ of**
21 **Certiorari Filed herewith)**

22 **8. Lack of Faretta Waiver after 9/26/2023 (See writ of**
23 **Certiorari Filed herewith)**

24 **9. California Assembly Bill 1675 (California Anti-Slapp**
25 **Project)**

26 **10. SLAPP Special Motion Log, at [https://www.courts.ca.gov/](https://www.courts.ca.gov/cms/slapp.htm)**
27 **[cms/slapp.htm](https://www.courts.ca.gov/cms/slapp.htm) (2/15/2023)**

28 **11. ANTI-SLAPP filed 2/15/2023 in the Stanislaus County**
Superior Court.

12. Order on ANTI-SLAPP filed February 16, 2023, case number
CR20008761.

13. Request to enter default on ANTI-SLAPP CR2008761

¹ See Flam v. Flam, 788 F.3d 1043 (9th Cir. 2015) (holding a remand order is beyond the power of a magistrate judge to issue and directing district court judge to either consider motion for remand in the first instance or request the magistrate judge prepare a report and recommendation regarding the remand motion).

1 14. Affidavit of Carolyn Schaupp
2 (ECF No. 3 at 2–3) (emphasis in original).

3 **B. Discussion**

4 Courts may take judicial notice of “adjudicative facts” and other facts not subject to
5 reasonable dispute and either “generally known” in the community or “capable of accurate and
6 ready determination by reference to sources whose accuracy cannot be reasonably questioned.”
7 Fed. R. Evid. 201(b).

8 The Court may judicially notice “proceedings in other courts, both within and without the
9 federal judicial system, if those proceedings have a direct relation to matters at issue.” Bias v.
10 Moynihan, 508 F.3d 1212, 1225 (9th Cir. 2007) (internal quotation omitted); Bennett v.
11 Medtronic, Inc., 285 F.3d 801, 803 n.2 (9th Cir. 2002) (same); see also Lee v. City of L.A., 250
12 F.3d 668, 689 (9th Cir. 2001) (court may take judicial notice of undisputed matters of public
13 record). Thus, the Court may judicially notice the Ninth Circuit case, Batzel v. Smith, cited by
14 Defendant (Request 2, ECF No. 3 at 27–67); and any actual filings by Defendant in her
15 referenced cases or orders relating thereto. For example, the Court may judicially notice the
16 minute order issued in Viss v. Schaupp, Case No. FL-22-001489, its finding that no case titled
17 “Stanislaus County Public Defendant v. Carolyn Hope Schaupp” exists in the Superior Court for
18 Stanislaus County, and the fact that the court struck Defendant’s “Notice of Motion and Special
19 Motion to Strike” as defective in that case (ECF No. 3 at 133), as well as the court’s order in
20 People v. Schaupp, Case No. CR-20-008761 (Request 12, ECF No. 3 at 135–37), which also
21 discusses Defendant’s “Notice of Motion and Special Motion to Strike,” referring to it as
22 “Defendant’s Purported Anti-SLAPP Motion.” Bias, 508 F.3d at 1225. To the extent
23 Defendant’s Requests 3 and 4 also relate to the aforementioned findings in these orders, they are
24 granted. Id.

25 The Court may also judicially notice California Assembly Bill 1675 (Request 9, ECF No.
26 3 at 69–72), as a public record that is not subject to reasonable dispute and “capable of accurate
27 and ready determination by reference to sources whose accuracy cannot be reasonably
28 questioned.” Lee, 250 F.3d at 689; Reyn’s Pasta Bella, LLC v. Visa USA, Inc., 442 F.3d 741,

1 746 (9th Cir. 2006) (The court “may take judicial notice of ... matters of public record.”); see also
2 Chaker v. Crogan, 428 F.3d 1215, 1223 n.8 (9th Cir. 2005) (taking judicial notice of legislative
3 history).

4 The Court may also judicially notice information displayed on government websites
5 where neither party disputes the accuracy of the information contained therein. Daniels-Hall v.
6 Nat’l. Educ. Ass’n, 629 F.3d 992, 998-99 (9th Cir. 2010). Accordingly, the Court may judicially
7 notice the entries listed on the SLAPP special motion log, at the website indicated by Defendant
8 (Request 10, ECF No. 3 at 74–77).

9 However, while the Court may judicially notice the fact that certain documents were filed
10 in Defendant’s various cases or certain orders were issued, the Court may not accept as true
11 arguments asserted within the filings, or legal conclusions about those filings. See Khoja v.
12 Orexigen Therapeutics, Inc., 899 F.3d 988, 1000 (9th Cir. 2018) (it is improper to judicially
13 notice a transcript when the substance of the transcript “is subject to varying interpretations, and
14 there is a reasonable dispute as to what the [transcript] establishes.”) (citation omitted). For this
15 reason, the Court may judicially notice the fact that Defendant’s “notice of motion and special
16 motion to strike, pursuant to C.C.P. § 425.16 (see ECF No. 3 at 79–132 (presumably related to
17 Requests 3, 4, and 11)) was filed as a “filed on demand” filing with the Superior Court for the
18 County of Stanislaus on February 15, 2023, but it cannot judicially note as true the facts and
19 arguments asserted by Defendant in her motion. Khoja, 899 F.3d at 1000. The same applies to
20 Defendant’s affidavit (Request 14, ECF No. 3 at 125–30). Similarly, the Court cannot judicially
21 notice certain orders filed in cases to be “void” merely because Defendant characterizes them as
22 such in her court filing and caption (see ECF No. 3 at 79). Khoja, 899 F.3d at 1000. Thus,
23 Defendant’s Requests 5, 6, 7, and 8 must be denied.

24 The Court also declines to take judicial notice of Defendant’s “petition for writ of
25 prohibition/mandate/habeas corpus” (Request 1, ECF No. 3 at 6–25), and her “Motion to
26 Dismiss/Request to Enter Default C.C.P. in Anti-SLAPP Filed February 15, 2023” (Request 13,
27 ECF No. 3 at 141–96), as they are unsigned, unverified documents with no indicia of being filed
28 with any court, and containing legal arguments and facts subject to dispute.

1 Finally, the Court may judicially note Defendant filed an affidavit in Case No. CR-
 2 2008761 on April 25, 2023 (Request 14, ECF No. 3 at 198–208), but it cannot judicially notice
 3 the facts contained therein, which may be subject to dispute. Khoja, 899 F.3d at 1000.

4 **C. Conclusion**

5 In sum, with respect to the documents attached to her request for judicial notice and based
 6 on the foregoing, the Court grants Defendant’s request for judicial notice as to Requests 2, 9, 10,
 7 and 12, and the fact that the documents identified in Requests 3, 4, 11, and 14 were filed in the
 8 Superior Court of Stanislaus County, but declines to judicially notice the truth of the matter
 9 asserted within Defendant’s filings with respect to those requests. All other requests are denied.

10 **II.**

11 **NOTICE OF REMOVAL**

12 Defendant purports to remove this action pursuant to 28 U.S.C. §§ 1455 and 1331. (ECF
 13 No. 1 at 2.) However, she also appears to argue the matter is brought before this Court pursuant
 14 to 28 U.S.C. § 1332 (diversity jurisdiction), 28 U.S.C. § 1443 (civil actions), 28 U.S.C. § 1914,²
 15 and 28 U.S.C. § 1441 (removal of civil actions). (See ECF No. 1 at 2–5.)

16 As an initial matter, the Court notes §§ 1331, 1332, and 1441 are not applicable here,
 17 where Defendant purports to remove a criminal action, because these sections pertain to the
 18 removal of civil actions. See 28 U.S.C. § 1441 (discussing removal of civil actions); 28 U.S.C. §
 19 1331 (providing federal question jurisdiction in civil actions); 28 U.S.C. § 1332(a) (providing for
 20 diversity jurisdiction in civil actions).

21 **A. 28 U.S.C. § 1455**

22 Turning to the applicable statutes, 28 U.S.C. § 1455 provides the following procedures for
 23 removal of criminal prosecutions:

24 **(a) Notice of removal.**—A defendant or defendants desiring to
 25 remove any criminal prosecution from a State court shall file in the
 26 district court of the United States for the district and division within
 27 which such prosecution is pending a notice of removal signed
 pursuant to Rule 11 of the Federal Rules of Civil Procedure and
 containing a short and plain statement of the grounds for removal,

28 ² 28 U.S.C. § 1914 concerns the payment of filing fees and therefore relates to Defendant’s motion to proceed *in forma pauperis*; as such, it shall be addressed in the next section of this order.

together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) Requirements.—(1) A notice of removal of a criminal prosecution shall be filed not later than 30 days after the arraignment in the State court, or at any time before trials, whichever is earlier, except that for good cause shown the United States district court may enter an order granting the defendant or defendants leave to file the notice at a later time.

(2) A notice of removal of a criminal prosecution shall include all grounds for such removal ... For good cause shown, the United States district court may grant relief from the limitations of this paragraph.

...

(4) The United States district court in which such notice is filed shall examine the notice promptly. If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand.

28 U.S.C. § 1455 (emphasis in original).

Somewhat confusingly, Defendant’s filing is titled “notice of removal and interlocutory appeal of state court action to United States District Court” (ECF No. 1 at 1–11); however, within the same filing, Defendant also includes a separately-captioned document titled “petition for writ of certiorari” (*id.* at 12–21), in which Defendant indicates she is petitioning the Court for a writ of certiorari before judgment (in the State case) to review a decision of the California Superior Court for the County of Stanislaus. More specifically, this second document requests a writ to issue from this Court ordering the Superior Court of Stanislaus County to produce certain records to Defendant from her State court casefile, which Defendant indicates were “fraudulent[ly] conceal[ed]” and not provided to her. (See *id.* at 13.) Defendant appears to assert removal is proper because the Court has jurisdiction over “this civil action” based on federal question jurisdiction.³ (*Id.* at 2–3.) Defendant indicates the Court should relate several cases—FL22001489, PR20000740, FL20001695, 23STPB03148, and 22CCADO1060—to the instant

³ Regardless of Defendant’s attempt to categorize Case No. CR-20008761 as a civil matter, the court filings attached to her request for judicial notice, the case number itself, and Defendant’s own acknowledgement demonstrate that the case is a criminal matter. Defendant’s attempt to apply to her criminal case statutes which expressly only govern civil matters is therefore unavailing.

1 criminal matter because they were filed all over California by Monica Izzo Viss and Simon Viss
2 based on similar allegations, even though Defendant's anti-SLAPP motions were denied in each
3 of these cases. (Id. at 2.) Defendant asserts this Court has jurisdiction over her State case (and
4 the related case/s) because the denial of her anti-SLAPP motion is reviewable by this Court
5 pursuant to the collateral order doctrine and the Erie doctrine. (Id.) Defendant also asserts this
6 Court has jurisdiction over her State criminal case based on questions of law related to the
7 Rehabilitation Act and Civil Rights Act. (Id. at 2–3.)

8 The Court is unpersuaded that Defendant's State case is properly removed pursuant to §
9 1455. The aforementioned facts do not constitute a "short and plain statement of the grounds for
10 removal," as required under 28 U.S.C. § 1455(a). Consequently, it is not entirely clear what
11 Defendant's proffered basis for removal is. For example, at one point in the notice of removal, it
12 appears Defendant asserts she filed an anti-SLAPP motion in another case, FL-22-001489, which
13 was purportedly wrongfully denied (see ECF No. 3 at 133), and the current criminal case, CR-20-
14 008761, is removed based on that denial because it is a related SLAPP case. (See ECF No. 1 at
15 2.) At another point in the notice of removal, Defendant appears to assert the removal is
16 predicated on a purported "deprivation of hearings and a fair trial, deprivation of witnesses and
17 evidence and discovery, abuse of discovery, prosecutorial witness tampering, prosecutorial
18 evidence tampering, judicial misconduct and retaliation, and more" during her criminal
19 proceedings, as well as violations of due process and equal protection rights. (Id. at 3, 4.) In any
20 event, statements that this Court has jurisdiction over the criminal matter due to federal question
21 jurisdiction, diversity jurisdiction, and other statutes are conclusory; moreover, Defendant's
22 reliance on civil statutes that are inapplicable to the instant criminal matter is unavailing.

23 Further, Defendant's reference to cases other than the criminal matter, CR-20-008761, is
24 unavailing, as there is no indication that these cases have been consolidated, much less related to
25 the instant matter, and are therefore not presently before this Court. In fact, it is not entirely clear
26 under what statutes Defendant is being charged in her criminal case because, as noted below,
27 Defendant does not attach copies of the pleadings from her criminal case to the instant removal
28 notice and she does not identify the underlying criminal charges in her notice of removal. As best

1 as the Court can ascertain from the documents attached to the request for judicial notice, however,
2 it appears Defendant was charged with violations of California Vehicle Code § 23152(a) (driving
3 under the influence) and California Penal Code § 273a(a) (willfully permitting a child under her
4 care or custody to be “placed in a situation where his or her person or health is endangered”
5 “under circumstances or conditions likely to produce great bodily harm or death”), regarding an
6 incident occurring on July 11, 2020. (See ECF No. 3 at 11.)

7 Defendant also fails to attach copies of “all process, pleadings, and orders” served upon
8 her in the at-issue criminal case, in compliance with 28 U.S.C. § 1455(a). Defendant argues these
9 filings were never served on her. But the Court finds this argument unavailing. The one order
10 from Defendant’s criminal case which she does submit (see ECF No. 3 at 135–37) indicates
11 Defendant is represented by court-appointed counsel in her criminal matter, and therefore has
12 access to her casefile through her attorney.⁴ Specially, the criminal court notes in its February 16,
13 2023 order in case CR-20-008761, “Ms. Schaupp is represented by counsel....” (*Id.* at 135.)

14 Nor is the Court persuaded that Defendant’s removal is timely under the statute. Section
15 1455 requires removal of a criminal matter before the earlier of either: 30 days after the
16 arraignment, or before trial. 28 U.S.C. § 1455(b)(1). Here, however, some of Defendant’s
17 statements suggest that her criminal matter has been finally adjudicated (see ECF No. 3 at 201
18 (affidavit discussing the “trial phase” of Defendant’s criminal case); see also *id.* at 6–25
19 (document created by Defendant that appears to be intended as a writ of habeas corpus, relating to
20 criminal case)), though this is also unclear, as Defendant does not attach copies of “all process,
21 pleadings, and orders,” 28 U.S.C. § 1455(a), served upon her in the at-issue criminal case. The
22 order from case CR-20-008761 indicates, as of February 16, 2023, the criminal matter was set for
23 further proceedings regarding a pending determination of competency pursuant to Cal. Penal
24 Code § 1368. (ECF No. 3 at 135.) Further, the February 16, 2023 order was issued at least 40
25 days after Defendant’s prior court date. (See *id.* at 136.) On this record, the Court does not find

26 ⁴ The fact that Defendant is represented by counsel in her criminal case also suggests that her attempt to file the
27 instant removal notice, *pro se*, is inappropriate absent any indication that Defendant is no longer represented by her
28 criminal case court-appointed attorney. (See also *id.* at 135 (court order indicating any *pro se* filing submitted by
Defendant to the state court would not be deemed filed, but would instead be automatically forwarded to her attorney
for further consideration on how to proceed).)

1 good cause exists to grant Defendant leave to file the notice of removal at a later time than that
2 provided in the statute. 28 U.S.C. § 1455(b)(1).

3 At bottom, Defendant's notice of removal fails to satisfy the procedural or substantive
4 requirements of 28 U.S.C. § 1455, and the Court does not discern any good cause to relieve
5 Defendant of these requirements. Accordingly, the case must be summarily remanded. 28 U.S.C.
6 § 1455(b)(4).

7 **B. 28 U.S.C. § 1443**

8 The Court also considers Defendant's notice of removal pursuant to 28 U.S.C. § 1443.
9 Section 1443 permits removal of "civil actions or criminal prosecutions" by a defendant based on
10 allegations that state proceedings would violate certain federally-protected rights. Specifically,
11 this provision allows for removal, by a defendant, of a criminal case from state court to federal
12 court in two circumstances:

13 (1) [the defendant] is denied or cannot enforce in the courts of such
14 State a right under any law providing for the equal civil rights of
citizens of the United States, or of all persons within the jurisdiction
15 thereof; [or]

16 (2) [the prosecution is] for any act under color of authority derived
from any law providing for equal rights, or for refusing to do any
17 act on the ground that it would be inconsistent with such law.

18 28 U.S.C. § 1443.

19 As previously noted, Defendant appears to assert the removal is predicated on a purported
20 "deprivation of hearings and a fair trial, deprivation of witnesses and evidence and discovery,
21 abuse of discovery, prosecutorial witness tampering, prosecutorial evidence tampering, judicial
22 misconduct and retaliation, and more" during her criminal proceedings, as well as violations of
23 due process and equal protection rights. (ECF No. 1 at 3, 4.) However, these assertions are all
24 conclusory and no supporting facts are provided. It is, therefore, entirely unclear to this Court
25 what wrongful conduct Defendant is claiming with respect to her criminal case. At most, based
26 on the various random court documents included in Defendant's request for judicial notice, the
27 Court can discern the following procedural status of Defendant's underlying case/s:

28 In an order of the court in the matter of Viss v. Schaupp, Case No. FL-22-001489, the

1 state court notes Defendant filed an “ex parte application” for a domestic violence restraining
2 order, in which Defendant named “plaintiffs” who are not parties to that case. (ECF No. 3 at
3 133.) More specifically, the filing refers to that case as “Stanislaus County Public Defender, et al.
4 v. Carolyn Hope Schaupp”; the court noted no such case exists at the Stanislaus Superior Court
5 and Defendant may not unilaterally create it through her pleading captions. (Id.) Accordingly,
6 the court rejected Defendant’s ex parte filing because she did not seek and obtain leave to add
7 such nonparties to the action. (Id.) In the same order, the court notes Defendant filed a “Notice
8 of Motion and Special Motion to Strike” bearing the same defects and struck that filing as well.
9 (Id.) Having struck the improper filings, the state court further noted no hearings on those
10 motions would be set, nor would any further ruling on those matters be issued. (Id.)

11 In the underlying criminal action that Defendant purports to remove, Case No. CR-20-
12 008761, the state court issued an order on February 16, 2023, addressing Defendant’s purported
13 anti-SLAPP motion. (Id. at 135.) In this order, the state court noted Defendant failed to timely
14 appear for a hearing to determine competency pursuant to California Penal Code § 1368, and that
15 it had discovered the reason for Defendant’s absence was that she was at the clerk’s office at that
16 time, attempting to file an “Ex Parte Motion to File Anti-SLAPP Hearing” and a “Special Motion
17 to Strike Pursuant to PC 425.16.” (Id.) The court noted Defendant “has on more than one
18 occasion disrupted and delayed the orderly process of court by going to the Clerk’s office and
19 filing documents during times when her matter was scheduled for court.” (Id. at 136.) The state
20 court further noted that, because Defendant is represented by counsel, her attempts to file
21 documents *pro se* were improper; accordingly, the court indicated that, rather than accept further
22 pleadings from Defendant, it would forward the documents to her attorney, who may then
23 determine how to proceed. (Id. at 135.) In addition, the court noted it had considered the
24 propriety of an anti-SLAPP motion and would consider and rule on any such motion if it were
25 brought forward by counsel. (Id. at 136.) Finally, the state court noted that if Defendant
26 “chooses to absent herself from court proceedings, the Court will consider forfeiting the bond in
27 the case and issue a warrant for her arrest, unless the circumstances and good cause exists to do
28 otherwise.” (Id. at 137.)

1 This Court surmises Defendant’s instant notice of removal, which she has indicated is
 2 predicated on the denial of her anti-SLAPP motion (ECF No. 1 at 2), is based on the same
 3 purported anti-SLAPP motions rejected by the state court as improperly filed by Defendant
 4 without knowledge of her counsel, and as pertaining to nonparties and a case which does not
 5 exist. In light of the aforementioned state court orders, this Court cannot conclude Defendant has
 6 presented any viable legal basis for removal at this time.

7 In sum, because Defendant’s notice fails to state a legally cognizable basis for removal of
 8 the state criminal prosecution, and because granting leave to amend would be futile given that a
 9 proper basis could not be stated on amendment of the present set of allegations, the Court finds
 10 the notice of removal should be summarily dismissed and this action should be remanded to the
 11 Superior Court of Stanislaus County.

12 III.

13 APPLICATION TO PROCEED IN FORMA PAUPERIS

14 28 U.S.C. § 1914 concerns the payment of filing fees and therefore relates to Defendant’s
 15 motion to proceed *in forma pauperis*. Section 1914 provides, “[t]he clerk of each district court
 16 shall require the parties instituting any civil action, suit or proceeding in such court, whether by
 17 original process, removal or otherwise, to pay a filing fee of \$350, except that on application for a
 18 writ of habeas corpus the filing fee shall be \$5.” 28 U.S.C. § 1914(a). Because this statute only
 19 contemplates the requirement of a filing fee in civil actions and does not address criminal actions,
 20 numerous federal district courts have determined the filing fee requirement is applicable only to
 21 civil and not criminal actions. See, e.g., Martin v. Juridicary, 3rd Cir., No. CV 22-00506 LEK-
 22 WRP, 2022 WL 18586942, at *1 (D. Haw. Dec. 12, 2022), report and recommendation adopted
 23 sub nom. Martin v. Hawaii Judiciary, 3rd Cir., 2023 WL 143332 (D. Haw. Jan. 10, 2023), appeal
 24 dismissed sub nom. Martin v. Hawaii Judiciary, No. 23-15211, 2023 WL 3480916 (9th Cir. Apr.
 25 20, 2023) (noting the Ninth Circuit has not addressed this issue, but the Fifth Circuit has held
 26 there is no filing fee to remove a state criminal case to federal court because 28 U.S.C. § 1914(a)
 27 only requires filing fees for civil actions) (collecting cases).

28 Consistent with these persuasive legal authorities, the Court finds Plaintiff is not required

1 to pay the civil case filing fee in connection with her removal of the instant State criminal action.
2 Accordingly, Defendant's application to proceed *in forma pauperis* in this matter (ECF No. 2)
3 should be denied as moot.

4 **IV.**

5 **ORDER AND RECOMMENDATIONS**

6 Based on the foregoing, IT IS HEREBY ORDERED that the Clerk of the Court shall
7 randomly assign a District Judge to this action.

8 Furthermore, IT IS HEREBY RECOMMENDED that:

- 9 1. Plaintiff's application to proceed *in forma pauperis* (ECF No. 2) be DENIED as
10 moot;
11 2. This action be SUMMARILY DISMISSED and REMANDED to the Superior
12 Court for Stanislaus County; and
13 3. The Clerk of the Court be directed to CLOSE this case.

14 These findings and recommendations are submitted to the district judge assigned to this
15 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within **fourteen**
16 **(14) days** of issuance of this recommendation, Plaintiff may file written objections to the findings
17 and recommendations with the Court. Such a document should be captioned "Objections to
18 Magistrate Judge's Findings and Recommendations."

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 The district judge will review the magistrate judge's findings and recommendations
2 pursuant to 28 U.S.C. § 636(b)(1)(C). Plaintiff is advised that failure to file objections within the
3 specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834,
4 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

5
6 IT IS SO ORDERED.

7 Dated: **June 9, 2023**


UNITED STATES MAGISTRATE JUDGE